

82D CONGRESS
1st Session

} HOUSE OF REPRESENTATIVES {

REPORT
No. 710

LEFRANCOIS & CHAMBERLAND, INC.

JULY 19, 1951.—Committed to the Committee of the Whole House and ordered to be printed

Mr. RODINO, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1417]

The Committee on the Judiciary, to whom was referred the bill (S. 1417) for the relief of Lefrancois & Chamberland, Inc., having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The facts will be found fully set forth in Senate Report No. 389, Eighty-second Congress, first session, which is appended hereto and made a part of this report. Your committee concur in the recommendation of the Senate.

[S. Rept. No. 389, 82d Cong., 1st sess.]

The purpose of the proposed legislation is to pay the sum of \$47.98 to Lefrancois & Chamberland, Inc., in full satisfaction of its claim against the United States for damages to the corporation's automobile incurred when the automobile was struck by a Government truck.

STATEMENT

On March 24, 1948, a Government vehicle operated by a Government employee on official business struck and damaged the parked automobile owned by Lefrancois & Chamberland, Inc. The solicitor of the Department of Agriculture, in a letter addressed to the sponsor of this bill, states, in substance, that the accident was not due to the negligence of the driver of the Government truck, but instead was caused by a mechanical failure of the Government vehicle. He further states that since the Government vehicle had been checked at a commercial garage a few days earlier no negligence could be attributed to the Government for the mechanical failure.

The claimant sought reimbursement by agency action under the provisions of the Federal Tort Claims Act (28 U. S. C. 2672). He was denied relief under that act since the agency concerned (the Department of Agriculture) held that no negligence on the part of the United States had been established and therefore no relief was available to the claimant under the provisions of the Federal Tort Claims Act.

While the committee is willing to accept the finding of the agency that the claimant is unable to recover damages under the Federal Tort Claims Act, the

committee does not feel that such a finding precludes a congressional grant of relief to the claimant. It is the feeling of the committee, that, irrespective of the question of negligence, the claimant ought to be reimbursed for the damages to its automobile. Equitably, as between the two legally innocent parties, the loss ought to fall on the owner of the mechanically imperfect vehicle. The committee, therefore, recommends favorable consideration of this legislation.

Attached to this report is the letter of the Solicitor of the Department of Agriculture addressed to the sponsor of this bill.

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SOLICITOR,
Washington 25, D. C., March 16, 1951.

HON. GEORGE D. AIKEN,
United States Senate, Washington 25, D. C.

DEAR SENATOR AIKEN: This is with reference to your letter of March 1, 1951, relative to the disallowance of the claim of Lefrancois & Chamberland, Inc., for \$47.98 under the Federal Tort Claims Act, by reason of an automobile accident.

A review of the case shows that on March 24, 1948, the driver of the Government car involved in the accident was following a line of traffic on Strongs Avenue in Rutland, Vt., at about 10 to 15 miles per hour, when the cars in front of him came to a sudden stop. The Government driver applied his foot brake, but it failed to operate. Consequently, he only had time to swerve to the right to avoid hitting the vehicle immediately in front of him in line of traffic and, in doing so, his vehicle struck the car of Lefrancois & Chamberland, Inc., which was parked alongside the right-hand curb, locking bumpers. Only a few days before the accident, the brakes of the Government car were examined at a commercial garage. The garage mechanic found that the master cylinder was low in hydraulic fluid, but could find no evidence of a leak in the system. The mechanic refilled the master cylinder, bled the system, and tightened up the brake bands. The Government driver had no warning that the brakes might not function since, when it became necessary for the sudden stop, he applied the brakes and they held momentarily, then failed.

From the above, it is determined that the collision was the result of an unavoidable accident, and that no negligence could be attributed to the Government driver. The Government driver was unaware of any defect in the vehicle and he had a right to assume that the car was in good condition after it was released from the garage. Not having knowledge of the defect and having used reasonable care in having the car repaired, the Government cannot be charged with negligence predicated upon any failure to inspect the vehicle and check upon the garage mechanic. Casualties of this type are not frequent, but they do occur, and since the Federal Tort Claims Act (28 U. S. C., sec. 2672), authorizes payment only for "negligent or wrongful act or omission", we find the Government without authority to reimburse such claimants, even though they, too, are without fault in the matter.

On June 9, 1949, Lefrancois & Chamberland, Inc., were notified of the disallowance of their claim, and on August 18, 1949, a summary of the above evidence was forwarded to them.

This claim was given extended consideration by this office including a review by a committee of attorneys appointed for the purpose of reviewing all tort claims against the Government growing out of activities of this Department. I established this committee shortly after the passage of the Federal Tort Claims Act to review decisions on claims presented against the Department in amounts of a thousand dollars or less and, therefore, within the authority of this Department to settle. When a claim is presented it is considered by an attorney in one of the divisions of this office, the conclusion is approved by the division chief and the claim then is forwarded to the review committee, which committee must recommend to me its final disposition. In the event the recommendation of the committee is not unanimous, the dissenting member of the committee is required to submit his opinion in writing to me. I have thus attempted to assure myself that each case which I decide will have a full and careful consideration. As I have indicated above, this case was so considered.

I regret the Department is without authority on the present record to reimburse for this damage. If there is any additional evidence which the claimants may wish to submit, this office will be glad to reconsider the case.

Sincerely yours,

W. CARROLL HUNTER, *Solicitor.*